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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/935,155      | 08/22/2001  | Eberhard Holl        | 10191/1898          | 9226             |

26646 7590 01/21/2003

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| EXAMINER |
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PEZZLO, BENJAMIN A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3683     |              |

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SF

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/935,155             | HOLL                |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Benjamin A Pezzlo      | 3683                |  |

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
  - 4a) Of the above claim(s) 5-10, 12 and 13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species I in Paper No. 6 is acknowledged.

### ***Claim Objections***

2. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 recites "maintaining a braking force . . . in at least one operating state with the brake pedal depressed". Claim 2 recites a list of alternative conditions for maintaining a braking force including "the brake pedal is depressed".

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, line 3, "wishes to make a standing start" is indefinite.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, “reducing the braking force if the brake pedal is released” appears to conflict with the limitation of claim 1, “maintaining a braking force . . . independently of an extent of a brake pedal actuation”.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kubota et al. (US 4717207).

Kubota et al. disclose a method for controlling a wheel brake of a vehicle, the method including a determining a road slope (see col. 5 lines 39-32; col. 6 lines 51-59; and Fig. 10 step 104: vehicle tilt indicating road slope), maintaining a braking force at a wheel independently of an extent of a brake pedal actuation (see col. 7 lines 5-7: “the brake fluid pressure holding condition is maintained even when the brake pedal is not operated by the driver” i.e. brake pressure is held even after the driver removes his/her foot from the pedal), in at least one operating state with the brake pedal depressed (see col. 6 lines 60-66: specifically, “the vehicle is in the stopped condition on the slope” i.e. the brake is depressed), if the road slope points in a

direction of a future travel direction of the vehicle (see col. 4 lines 44-45: “maintains the brake fluid pressure at that time during stopping on the ascending slope”; also see col. 6 lines 42-59: the sensor determines if the vehicle is in “first” or “reverse” gear and then determines road slope as an angle “theta”, which is compared to a predetermined angle “theta-sub-not” to determine whether to initiate braking”; see also col. 9 lines 62-68 and col. 11 lines 34-46 for an alternative embodiment for determining whether road slope points in a direction of a future travel direction), reducing the braking force for at least one condition (see col. 8 line 65 to col. 9 line 10: drive torque necessary to move the vehicle up the slope provides the condition for reducing the braking force).

Re claim 2, see col. 10 lines 15-16: a determination is made if the vehicle speed is zero.

Re claim 3, see col. 8 line 65 to col. 9 line 10, discussed above, if the driver makes a standing start, and sufficient torque is generated then braking force is reduced according to the disclosed method.

Re claim 4, if any one of the criterion of claim 3 is satisfied, for example, if the driver makes a standing start, then normal operation of the brake resumes. In this scenario, claim 4 reads on a conventional brake, i.e. releasing the brake pedal releases the brakes.

Re claim 11, see col. 5 lines 45-60.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Buschmann et al., Sol, Warner, Matsuo et al., Bursteinas et al., Kim ('752 and '282), Ota et al., Lee, Yano, and Siepker disclose related devices.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A Pezzlo whose telephone number is (703) 306-4617. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on (703) 308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

 / 15/03

Benjamin A Pezzlo  
Examiner  
Art Unit 3683

BAP  
January 15, 2003